

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-4134 75-4135 *Signed*

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTATE OF DAVID H. LEVINE, Deceased, JACOB PAUL
LEVINE and RICHARD L. LEVINE, Executors,

Appellees

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellant

LILLIAN K. LEVINE,

Appellee

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellant

ON APPEALS FROM THE DECISIONS OF THE UNITED STATES TAX COURT

BRIEF FOR THE APPELLANT

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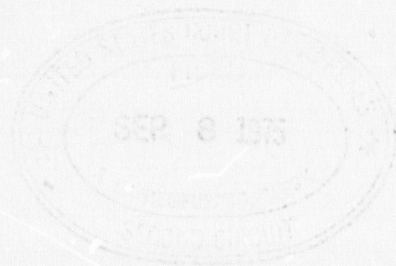




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STATEMENT OF THE ISSUE PRESENTED

Whether the Tax Court erred in holding that the value of life income interests payable after majority to the minor beneficiaries of several trusts qualified as gifts of present interests eligible for the \$3,000 per donee annual exclusion from taxable gifts.

STATEMENT OF THE CASE

This is an appeal by the Commissioner of Internal Revenue from the decisions of the United States Tax Court (Honorable Leo H. Irwin) entered in these consolidated cases on the basis of a reviewed opinion by the Tax Court. (R. 1, 3, 48.^{1/}) In its decisions, the Tax Court determined that there was a deficiency in the gift tax due from petitioner-estate of David H. Levine for the calendar year 1968 in the amount of \$192.92, and that there was no deficiency in gift tax due from petitioner Lillian K. Levine for the calendar year 1968. (R. 54, 56.) The opinion of the Tax Court is reported at 63 T.C. 136. The decisions of the Tax Court in both cases were entered on January 14, 1975, and the Commissioner filed timely notices of appeal on April 11, 1975. (R. 2, 4.) Jurisdiction is conferred on this Court by Section 7482(a) of the Internal Revenue Code of 1954 (26 U.S.C.).

The facts, as found by the Tax Court and as stipulated by the parties, are as follows:

On December 30, 1968, David H. Levine created five separate irrevocable trusts for the benefit of five of his grandchildren. (R. 32.^{2/}) The beneficiaries of these trusts were as follows (R. 32):

1/ "R." references are to the separately bound record appendix.

2/ David H. Levine died on January 26, 1973, after his petition was filed in the Tax Court in this case. (R. 1, 32.) On March 2, 1973, the Tax Court granted a motion to substitute the estate of David H. Levine, deceased, Jacob Paul Levine and Richard L. Levine, Executors, for David H. Levine as petitioner. (R. 32.) Lillian K. Levine is a party to this proceeding only because she consented in her gift tax return to have her husband's gifts treated as if they had been made one half by her and one half by him, as provided in Section 2513 of the Internal Revenue Code of 1954 (26 U.S.C.). (R. 32.)

<u>Beneficiary</u>	<u>Age at Date of Gift</u>
Laurie Rachel Levine	2
Lawrence Mark Levine	8
Roger Alan Levine	12
James Peter Levine	14
Sally Jane Levine	15

The corpus of each trust consisted of thirty shares of New Haven Moving Equipment Corporation common stock, having a value of \$3,750 at the date of gift. (R. 35.)^{3/}

Each of the trust instruments creating these five trusts was identical with all the others except for the designation of the beneficiary. (R. 32.) Under each of these trust instruments the trustees were given the power to hold, manage, invest and reinvest the trust property for the benefit of the

3/ The treatment of the majority income interest affects the computation of the tax in this case because the value of the minority income interest in each of these trusts at the date of gift was less than the allowable annual exclusion per donee. Treasury Regulations on Gift Tax (1954 Code), Section 25.2512-5(e) (26 C.F.R.), which was the controlling provision on December 30, 1968, the date of the gifts here in question, prescribed that actuarial computations necessary for valuing interests in property for purposes of the gift tax were to be made on the basis of the mortality table published as Table 38 of the United States Life Table and Actuarial Tables 1939-1941, published by the United States Department of Commerce, Bureau of the Census, with interest at 3-1/2 percent per year. This mortality table, together with commutation tables for calculating the required factors at 3-1/2 percent interest, and appropriate explanations and examples, were published as Internal Revenue Service Publication 11 (1973 C.C.H. Fed. Est. & Gift Tax Rep., par. 1209). Using the formula given in Example 11 of this publication to calculate the value at the date of gift of the minority income interest in each of these trusts, and subtracting that value from the value of a life income interest to obtain the value of the majority income interest, the values for the income and remainder interests in the five trusts in question in this case, using the stipulated values for the ages of the beneficiaries and the total value of each gift (R. 28-29) are as follows:

named beneficiary. (R. 32.) The trust instruments provided as follows with respect to the disposition of the net income of each trust (R. 33):

1) Prior to Attainment of Age Twenty-One: Until * * * [the named beneficiary] shall attain the age of twenty-one (21) years, the Trustees shall accumulate and segregate the net income from the trust. The Independent Trustee may distribute to, or expend for the benefit of * * * [the named beneficiary] until * * * [he or she] attains the age of twenty-one (21) years, so much of the current or accumulated net income, as the Independent Trustee, in his sole discretion, shall determine. If * * * [the named beneficiary] dies before attaining the age of twenty-one (21) years, any part of the accumulated and segregated net

3/ (continued)

Beneficiary	Age at Date of Gift	Present Value of Minority Interest	Present Value of Majority Interest	Present Value of Life Interest	Present Value of Remainder Interest
Laurie Rachel Levine	2	1779.17	1487.91	3267.08	482.93
Lawrence Mark Levine	8	1343.69	1845.44	3189.13	460.85
Roger Alan Levine	12	993.21	2125.29	3118.50	631.50
James Peter Levine	14	798.84	2281.51	3080.35	669.64
Sally Jane Levine	15	696.46	2364.22	3060.68	689.33
Totals		5,611.37	10,104.37	15,715.74	3,034.25
Total Present Value of the Gifts (Life and Remainder Interest)					18,749.99

Taxpayers David H. Levine and Lillian K. Levine claimed the gift-splitting provisions of Section 2513 of the Code (26 U.S.C.) and sought to exclude the entire present value of the life interests in these five trusts, or \$15,715.74. (R. 31, 35-36.) The Commissioner asserted deficiencies on the basis that only the minority income interests were excludable as present interests, resulting in a total exclusion for both taxpayers of \$5,611.28. (R. 14, 26.) The difference between these two figures resulted in increased taxable gifts of \$5,050.88 attributable to each taxpayer, as a result of which the Commissioner asserted a deficiency in gift tax of \$1,026.31 against David H. Levine (R. 12, 13) and asserted a deficiency in gift tax of \$160.72 against Lillian K. Levine (R. 24). The principal reason for the discrepancy in the amount of tax due from each of the two taxpayers was that David H. Levine had made taxable gifts totaling \$39,218 in years prior to 1968. (R. 29.)

income not distributed to * * * [the named beneficiary] or expended for * * * [his or her] benefit, shall be paid to * * * [his or her] estate.

2) Upon the Attainment of Age Twenty-One: Upon * * * [the named beneficiary] attaining the age of twenty-one (21) years, the Trustees shall pay to * * * [the named beneficiary] in a lump sum, all of the accumulated and segregated net income not yet distributed to * * * [the named beneficiary] or expended for * * * [his or her] benefit, and thereafter, the Trustees shall pay all of the net income from the trust to * * * [the named beneficiary] during * * * [his or her] lifetime, at least annually, or in more frequent convenient installments.

The principal of each trust was to be held in trust during the lifetime of the named beneficiary, subject to a power of invasion for the benefit of the named beneficiary, exercisable by the independent trustee in his absolute and uncontrolled discretion. (R. 34.) The principal was also subject to an inter vivos power of appointment exercisable by the named beneficiary any time after he or she reached the age of 21 years, but appointment under this power could be made only to a lineal descendant of the grantor, and no appointment could be made to the named beneficiary, his or her creditors, or the creditors of his or her estate. (R. 34.) Finally, the principal was subject to a testamentary power of appointment exercisable by the named beneficiary by express reference to the power in his or her will. (R. 34.) As with the inter vivos power of appointment, this testamentary power of appointment could be

exercised only in favor of a lineal descendant of the grantor, and no appointment could be made to the named beneficiary, his or her creditors, or the creditors of his or her estate. (R. 34.)

The Commissioner conceded that to the extent of the value of the income interests until the respective beneficiaries reached 21 years of age (which will be referred to as the "minority income interests"), these trusts qualified as gifts of present interests in property which were eligible for the \$3,000 annual exclusion under Section 2503 of the Internal Revenue Code. (R. 42.) However, the Commissioner contended that the income interests in these trusts from the time the respective beneficiaries reached age 21 until death (which we will designate the "majority income interests") were future interests in property which were not eligible for the exclusion under Section 2503(b). (R. 42.) The petitioners, in turn, conceded that the remainder interests in the corpus of these trusts were future interests which were not eligible for the exclusion under Section 2503(b). (R. 44.) Thus, the only question presented to the Tax Court for decision was whether the majority income interests in these trusts were to be treated as present or future interests in property.^{4/} The Tax Court held that these interests qualified as gifts of present interests in property, and redetermined the deficiencies accordingly. (R. 46.) From this decision the Commissioner now brings this appeal.

^{4/} The value of the transferred shares at the date of gift was stipulated by the parties and is not in issue in this case. (R. 29.)

SUMMARY OF ARGUMENT

The Tax Court erred in holding that the majority income interests in the five trusts in question in this case qualified as present interests in property under Section 2503(c) of the Internal Revenue Code of 1954, and therefore were eligible for the \$3,000 annual exclusion from gifts provided in Section 2503(b) of the Code. Section 2503(c) is a narrowly drawn exception to the general rule of Section 2503(b), which allows the exclusion only for gifts of present interests in property; the Treasury Regulations under Section 2503(b) make clear that only a gift which confers an immediate right to the use, possession, or enjoyment of property or the income from property qualifies as a present interest. The gifts in question in this case clearly did not qualify under the provisions of Section 2503(b), standing alone, because they contained an accumulation provision which deprived them of the element of immediacy required by the Regulations. The question, then, is whether the gifts of income after majority fall within the scope of the special rule of Section 2503(c), conferring present interest status on gifts to minors which fulfill specified criteria.

The Tax Court treated the majority and minority income interests in these trusts as components of a single gift of a life income interest, which the court held qualified as a present interest under Section 2503(c). The legislative history of Section 2503(c), however, shows that it was intended to overcome the difficulties created by state law which imposed certain restrictions on the ability of a minor to accept and exercise

dominion and control over a gift of property. Accordingly, Congress authorized the treatment of a specific type of gift to a minor as a gift of a present interest in property. Among the restrictions imposed on such gifts was the requirement that the property and the income therefrom must pass to the donee at age 21 to the extent not previously expended by him or for his benefit. This requirement was not met here as to the majority income interest. The Tax Court's construction of the statute would allow a donor to tie up property for the entire lifetime of the donee, and even impose an accumulation provision during the minority of the donee, while still receiving the benefit of the \$3,000 annual exclusion for a gift of a present interest in the income for the life of the donee. Such an interpretation conflicts with the language of the statute and goes far beyond the need to which Congress was responding when it enacted it.

The Commissioner's position in this case is consistent with the Tax Court's decision in Herr v. Commissioner, 35 T.C. 732 (1961), aff'd 303 F. 2d 780 (C.A. 3, 1962). In Herr, the Tax Court held that a gift in trust could be fragmented into a gift of the minority income interest (held to be a present interest), and a gift of the remainder interest in the principal. As to the minority income interest, the gift qualified as a gift of a present interest in property, because the trustee had the power to expend the income for the benefit of the minor, and, to the extent not so expended, it would pass to the donee at majority. Thus, the Tax Court reasoned, the entire minority income interest would necessarily pass to the donee, free of

trust, at or before majority, and, therefore, this interest met the statutory requirement that the "property" must pass to the donee at 21. The majority income interests in question in the present case do not meet this criterion, since they will not begin to vest in possession or enjoyment until after majority, and a substantial part of the property in question will therefore not pass to the donee until after majority.

Accordingly, the Tax Court erred when it decided that the majority income interests in the trusts in question in this case were gifts of present interests within the meaning of Section 2503(c); its decisions should be reversed, and the case remanded for recomputation of the correct gift tax liability.

ARGUMENT

THE TAX COURT ERRED IN TREATING THE POST- MAJORITY INCOME INTERESTS AS GIFTS OF PRESENT INTERESTS QUALIFYING FOR THE ANNUAL EXCLUSION FROM TAXABLE GIFTS

Section 2503(b) of the Internal Revenue Code of 1954, Appendix, infra, provides that "In the case of gifts (other than gifts of future interests in property) made to any person by the donor * * * the first \$3,000 of such gifts to such person" shall not be included in the amount of taxable gifts made by the donor during the taxable year. The express statutory exception barring gifts of future interests in property from the \$3,000 annual exclusion is explained in Treasury Regulations on Gift Tax (1954 Code), Section 25.2503-3(a) and (b), Appendix, infra, as follows:

(a) No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession or enjoyment at some future date or time. * * *

(b) An unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (such as a life estate or term certain) is a present interest in property. An exclusion is allowable with respect to a gift of such an interest (but not in excess of the value of the interest). * * *

Section 2503(c) of the Code, Appendix, infra, however, provides a narrow and limited exception to the prohibition against the allowance of the annual exclusion for gifts of future interests in the case of certain gifts to minors. This section states:

(c) Transfer for the Benefit of Minor.--No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom--

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended--

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

In Herr v. Commissioner, 35 T.C. 732 (1961), aff'd, 303 F. 2d 780 (C.A. 3, 1962), the Tax Court considered the status under Section 2503(b) and (c) of the minority income interest in a trust which provided for accumulation of income during minority, with discretion in the trustee to distribute income or corpus for the benefit of the donee, and thereafter for payment of the income to the donee until age 30, when the corpus was to be paid over. The court held that no part of the gift in trust would qualify as a gift of a present interest under Section 2503(b), aside from subsection (c), because of the existence of the accumulation provision. (Id., pp. 734-735.) The court held, however, that the minority income interest, considered alone, did qualify under Section 2503(c) as a gift of a present interest. (Id., pp. 735-736.) The court reconciled this conclusion with the requirement of subsection (c) that the property and the income therefrom must pass to the donee on his attaining the age of 21 years by stating that (Id., pp. 736-737):

Accordingly, it is our opinion that * * * Congress intended the word "property" to mean, not the corpus of a trust, but the totality of elements that go to make up the entire gift that is being considered for classification as a present interest. In this case the totality of those elements consists of all the income up to majority. In the aggregate all such payments constitute the "property" in question, and since this "property" and the accretions thereto must be expended for the benefit of the donee prior to majority or paid over to the donee at 21 or to the donee's estate or appointee in the event of death prior to 21, the requirements of subsection (c) are fully met.

Consistent with the Herr decision, then, the only way that any interest in the five trusts created by David H. Levine can qualify as a gift of a present interest in property is by splitting off the minority income interest, and treating it as the relevant "property," a point which the Commissioner has already conceded. (R. 42.) See also Rev. Rul. 68-670, 1968-2 Cum. Bull. 413.

Clearly, if the majority income interest were to be treated separately, as the Tax Court did with the minority income interest in Herr, it is a future interest, since all the beneficiaries were minors at the date of the gift and, by definition, they would not receive possession or enjoyment of any rights under the majority income interest until they reached 21 years of age. See Treasury Regulations on Gift Tax (1954 Code), § 25.2503-3(b) (quoted supra).

But if the majority income interest were to be "merged" with the minority income interest into a single income gift, as the majority of the Tax Court did (R. 41-45), the resulting hybrid would not qualify as a present interest under either Code Section 2503(b) or (c). The trust instruments in the present case provide for the accumulation of the income of each trust until majority (R. 33) (quoted supra), and are thus similar to the trust in the Herr case, in that, as in Herr, this accumulation provision prevents the income interests from qualifying as gifts of present interests in property under Section 2503(b) standing alone. The Tax Court majority recognized this fact, and turned to Section 2503(c) as the only provision under which an exclusion could be claimed for the interests here in question. (R. 41-42.)

Section 2503(c) was added to the Internal Revenue Code when the Internal Revenue Code of 1954 was adopted. The legislative history, as Judge Raum pointed out in his opinion in Herr v. Commissioner, supra, p. 735, shows that the purpose of this amendment was to remove the uncertainty as to how a gift of a present interest in property could be made to a minor, where state law imposed a disability which prevented the minor from accepting and exercising dominion over the property.^{5/} H. Rep. No. 1337, 83d Cong., 2d Sess., p. 93 (3 U.S.C. Cong. & Adm. News (1954), 4017, 4120); S. Rep. No. 1622, 83d Cong., 2d Sess., p. 127 (3 U.S.C. Cong. & Adm. News (1954), 4621, 4760-4761). The House Report explains the effect of the new provision as follows (H. Rep. No. 1337, supra, p. A322 (3 U.S.C. Cong. & Adm. News (1954), p. 4465):

Subsection (c) of this section partially relaxes the "future interest" restriction contained in subsection (b), in the case of gifts to minors, by providing a specific type of gift for which the exclusion will be allowed. If the gift may be expended by, or for the benefit of, the minor donee prior to his attaining the age of 21 years, and, to the extent not so expended, will pass to the donee at that time, * * * the gift will not be treated as a future interest. (Emphasis added.)

The construction of the statute by the Tax Court majority in this case would expand this relaxation of the future interest restriction far beyond the intent of Congress as shown by the

^{5/} The Uniform Gifts to Minors Act, which provides a format for transfers intended to qualify for present interest status under Section 2503(c), was first adopted in 1956, and was revised in 1965 and 1966. It is in force in almost every state. See 8 Uniform Laws Ann., pp. 182-184.

legislative history, and far beyond the need which gave rise to the Congressional enactment. It would permit a donor to tie up the principal of his gift for the entire lifetime of the donee, and to provide for accumulation of the income during the minority of the donee, while still obtaining the tax benefits of a gift of a present interest in the income. And this is so despite the fact that the state law restrictions with which Congress was concerned in enacting Section 2503(c) would otherwise permit the donee to exercise dominion and control over the property and its income at majority. This suggests that Judge Raum was right when he said, in his dissent in this case, that "The donor cannot have it both ways." (R. 52.) Congress apparently intended that if a gift was to qualify under Section 2503(c), the beneficial enjoyment of the entire property comprising the gift could not be postponed after the beneficiary reached 21 years of age. A life estate in property with a remainder to someone other than the income beneficiary could qualify as a gift of a present interest, if at all, only under Section 2503(b), and therefore, only if the life tenant was assured of an immediate right to the income as generated. Fondren v. Commissioner, 324 U.S. 18 (1945); Commissioner v. Disston, 325 U.S. 442 (1945).

The Commissioner's position that the majority income interest in this case is a future interest is not inconsistent with his acquiescence in the Tax Court's decision in Herr v. Commissioner, supra, 1968-2 Cum. Bull. 2, or with Rev. Rul. 68-670, 1968-2 Cum. Bull. 413-414. As Judge Raum, who wrote

the Tax Court opinion in Herr, but who dissented in this case, recognized, the only way any part of a gift in trust containing an accumulation provision and not providing for the payment of the principal to the donee, free of trust, at age 21, could be reconciled with the requirements of Section 2503(c), was to treat the minority income interest as the relevant property for purposes of determining the classification of the interest. Herr v. Commissioner, supra, pp. 736-737. (R. 49-52.^{6/}) Assuming that the trust instrument required payment of the accumulated income to the beneficiary at 21, as was the case here, the minority income interest would necessarily pass to the donee in its entirety at or before age 21, thus satisfying the requirement, with respect to that interest, that the "property" must pass to the donee at 21. In Rev. Rul. 68-670, supra, p. 414, the Commissioner quoted the requirements of Section 2503(c), and then pointed out that "The courts have held that the term 'property' in section 2503(c) includes a right to receive trust income alone, without an accompanying interest in the corpus," citing Herr v. Commissioner, supra; and Commissioner v. Thebaut, 361 F. 2d 428 (C.A. 5, 1966). The Commissioner then held that the minority income interest satisfied the requirements of Section 2503(c) "because (1) the income may be used for * * * [the donee's]

^{6/} It bears noting that in his opinion in Herr Judge Raum made clear his view that the income interest payable from age 21 to age 30 was not within Section 2503(c) (35 T.C., pp. 736-737), a dictum reiterated in the opinion of the Court of Appeals. (303 F. 2d, p. 782). The instant case, however, is apparently the first one in which the courts have actually had to deal with this precise problem.

benefit during **his** minority, (2) accumulated income will be distributed to him at the age of 21, and (3) if * * * [the donee] should die before reaching 21, the accumulated income is payable to his estate or as he may appoint by will." Here again, the relevant interest qualifies as a present interest in property under Section 2503(c) only because the trust instrument provides for complete distribution of the property to the donee, free of trust, at 21.

The Tax Court majority in the present case (R. 16) held that the majority and minority income interests should be treated together as a single gift of a life interest, and then concluded that this life interest qualified as a gift of a present interest in property because, as the court stated (R. 45):

We do not believe that Congress intended to penalize a donor who desires to give an income interest for life and in so doing takes advantage of the provisions of section 2503(c) for the period of the beneficiary's minority.

In so concluding, the court was in error. As the legislative history makes clear, see discussion, supra, Section 2503(c) was intended to overcome certain state law restrictions on the ownership and control of property by minors which, in the absence of such a provision, might have made it impossible to make a gift to a minor donee which would qualify as a present interest in property. Accordingly, Congress authorized the treatment of a specific type of restricted gift to a minor donee as a present interest in property. Among the restrictions imposed by Congress on such gifts was that the property and the income therefrom

must pass to the donee when he attains the age of 21. The Tax Court majority would effectively write this restriction out of the statute by permitting the entire value of a life income interest in property to qualify, even though the property would be tied up in trust throughout the donee's lifetime, and a substantial part of the value of the interest being considered would not pass to the donee until after majority. The gifts in trust involved in this case were not the equivalent of outright life interests in the trust estates, which, if they were to qualify at all, would have had to provide for immediate mandatory distribution of the income in order to be treated as present interests under Section 2503(b). In Section 2503(c) Congress saw fit to permit a gift to a minor with a limited right of accumulation to qualify as a transfer of a present interest in property, but, as a condition to this relaxation of the normal rules, required that both the property and the income therefrom must pass to the donee at 21. A gift of a life income interest with power to accumulate the income until majority simply does not fit this statutory scheme.

CONCLUSION

For the reasons stated, the decisions of the Tax Court in these cases should be reversed, and the cases remanded for a redetermination of the correct amount of tax.

Respectfully submitted,

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SEPTEMBER, 1975.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 3rd day of September, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

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APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 2503. TAXABLE GIFTS.

*

*

*

(b) Exclusions From Gifts.--In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(c) Transfer for the Benefit of Minor.--No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom--

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended--

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

Treasury Regulations on Gift Tax (1954 Code) (26 C.F.R.):

§ 25.2503-3 Future interests in property.

(a) No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession or enjoyment at some future date or time. The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payments in the future. But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer used in effecting a gift.

(b) An unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (such as a life estate or term certain) is a present interest in property. An exclusion is allowable with respect to a gift of such an interest (but not in excess of the value of the interest). If a donee has received a present interest in property, the possibility that such interest may be diminished by the transfer of a greater interest in the same property to the donee through the exercise of a power is disregarded in computing the value of the present interest, to the extent that no part of such interest will at any time pass to any other person (see example (4) of paragraph (c) of this section). For an exception to the rule disallowing an exclusion for gifts of future interests in the case of certain gifts to minors, see § 25.2503-4.

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